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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,181	01/20/2004	Gregory S. DeKunder	API-1098US (COS-918)	2705

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EXAMINER

LU, C CAIXIA

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/761,181	Applicant(s) DEKUNDER ET AL.	
	Examiner Caixia Lu	Art Unit 1713	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
 4a) Of the above claim(s) 23-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-20-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-22, in the reply filed on April 13, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-3, 5-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Mcleod et al. (US 6,914,113).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

The instant claims are directed to an article comprising polyethylene having a "a" parameter of up to 0.40 and molecular weight distribution of 2-5. Mcleod's Samples 1-3 as show in Tables 2 and 3 teach ethylene polymers with molecular weight distributions from 4.47 to 4.54 and breadth parameter "a" from 0.285 to 0.306. Mcleod' teaching meets the limitation of the instant claims.

4. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mcleod et al. (US 6,914,113).

McLeod's teaching is relied upon as shown above. McLeod further teaches Samples 1 and 2 have gloss at 45° of 43.8 and 48.4 respectively. Since the gloss for the same film increase with the measurement angle, one would have expect McLeod's Samples 1 and 2 to inherently have higher gloss which meet the gloss limitation of the instant claims.

Even if the claimed properties are not inherent in the polymers of the prior art examples, it would still have been obvious to a skilled artisan to arrive at the claimed

subject matter because it appears that the claimed subject matter is within the generic disclosure of the prior art and expected to work.

Once a product appearing to be substantially identical is found and a 35 USC 102/103 rejection made, the burden of proof is shifted to the applicant to show an unobvious difference. In re Fitzgerald, 205 USPQ 594. In re Fessmann, 180 USPQ 324. Applicants have not met their burden to demonstrate an unobvious difference between the claimed product and the products of the prior art examples.

5. Claims 1-15 and 18-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Giblin et al. (US 6,960,375).

Giblin's Sample 1 (col. 8, line 1-21) discloses a bottle sample having a wall with trilayer configuration, the out layer and inner layer are metallocene polyethylene, Finacene BM 395 GS. Finacene BM 395 GS is also used in applicants' inventive examples and meets all of the limitations of the polyethylene of the instant claims according to applicants' disclosure in Tables 1 and 4 of applicants' Specification. Furthermore, Giblin teaches pigment can be used in the trilayer (col. 6, line 30). Therefore, Giblin's teaching meets the limitation of the instant claims.

6. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giblin et al. (US 6,960,375) alone or in combination with Gray et al. (US 2003/0030174).

Giblin's teaching is relied upon as shown above. Giblin further teaches that in the thickness of the trilayer would be 10-20 outer, 10-80% middle and 10-20 inner (col. 6, lines 58-59). When 20% of outer, 10% of middle and 20% of inner are used, Giblin's

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teaching renders the instant claims obvious in the absence of showing any criticality and unexpected results.

Gray teaches a trilayer film wherein the thickness of the trilayer would be 0.1-0.5 mils outer, 1.0-2.5 mils middle and 0.3-0.6 mils inner (page 4, [0053]). The out layer is an ethylene polymer with similar characteristics to Finacene BM 395 GS. The relationship of the inner layer and outer layer meets the percentage limitations of the instant claims.

Thus, it would have been obvious to a skilled artisan at the time the invention was made to employ Finacene BM 395 GS as the outer layer to Gray's trilayer film in order to provide a film with improves gloss and processability and in the absence of any showing criticality and unexpected results.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Caixia Lu whose telephone number is (571) 272-1106. The examiner can normally be reached from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful and the matter is urgent, the examiner's supervisor, David Wu, can be reached at (571) 272-1114. The fax numbers for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1700.



Caixia Lu, Ph. D.
Primary Examiner